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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

IN RE:

JOHN HOWELL WILSON AND LINDA
LEE WILSON,

Debtors.

Case No. 08-70190-13
(Chapter 13)

FIRST NATIONAL BANK OF WICHITA
FALLS,

Movant,

VS.

JOHN HOWELL WILSON AND LINDA
LEE WILSON,

Respondents.

(A CONTESTED MATTER)
HEARING DATE: DECEMBER 16, 2009,
AT 11:00 A.M.

MOTION FOR RELIEF FROM STAY

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES FIRST NATIONAL BANK OF WICHITA FALLS, Movant, and files this request for relief from the automatic stay of 11 U.S.C. §362(a) and in support thereof would respectfully show unto the Court the following:

1. Jurisdiction. This Court has jurisdiction of this contested matter pursuant to 28 U.S.C. §§157 and 1334, 11 U.S.C. §362, and by virtue of the fact that Respondents have filed a petition seeking relief under Title 11 of the United States Code in the above referenced bankruptcy case. Further, Movant is a creditor in this case and, therefore, an interested party. This contested matter is a core proceeding.

2. Indebtedness and Security. At the time of the filing of the petition for relief in this case, Movant was, and continues to be a creditor of Respondents, holding a claim in the amount of \$52,622.06. Among the collateral in which Movant has been granted a security interest or lien to secure payment and performance of Movant's claim is the following property (the "Collateral"):

ALL OF THE GRANTOR'S LEASEHOLD INTEREST IN AND TO THAT ONE CERTAIN LEASE DATED SEPTEMBER 13, 2000, BY AND BETWEEN CHARLIE PETE POORE AND RITA ANN POORE AND THE CITY OF WICHITA FALLS, WHICH HAS BEEN ASSIGNED TO GRANTOR BY ASSIGNMENT DATED DECEMBER 22, 2004, COVERING THE FOLLOWING DESCRIBED TRACT OF LAND OUT OF THE BRAZOS COUNTY SCHOOL LAND SURVEY, CLAY COUNTY, TEXAS, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT AN IRON STAKE FOUND AT THE SOUTHWEST CORNER OF THIS TRACT IN THE NORTH LINE OF ARROWHEAD DRIVE. THE NORTHEAST CORNER OF THIS SAID BRAZOS COUNTY SCHOOL LAND SURVEY BEARS NORTH 1180.3 FEET EAST, 4586.7 FEET;

THENCE NORTH 34 DEGREES 50' EAST, 227.5 FEET, IRON STAKE FOUND FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE SOUTH 56 DEGREES 48' EAST 7.7 FEET;

THENCE SOUTH 61 DEGREES 48' EAST, 67.5 FEET, IRON STAKE FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 34 DEGREES 50' WEST, 234.5 FEET TO AN IRON STAKE FOUND FOR THE SOUTHEAST CORNER OF THIS TRACT IN

THE NORTH LINE OF SAID ARROWHEAD DRIVE;

THENCE NORTH 55 DEGREES 10 ' WEST WITH THE NORTH LINE OF SAID ARROWHEAD DRIVE, 75.0 FEET, TO THE PLACE OF BEGINNING AND CONTAINING 0.4 ACRES OF LAND, MORE OR LESS, ALSO KNOWN AS LOT 50, BLOCK E, WEST SIDE OF LAKE ARROWHEAD AS PER PLAT FILED IN THE PARKS AND RECREATION DEPARTMENT, WICHITA FALLS, TEXAS.

3. Grounds for Relief From Stay. No equity exists in the Collateral for the benefit of the estate and the Collateral is of inconsequential value and benefit to the estate. Respondents' confirmed Chapter 13 Plan provided that Movant's claim will be paid direct, outside the Plan; however, Respondents are delinquent on the loan and have not made arrangements to make the loan current. Respondents have failed to make post-petition payments as they come due as required. Respondents are currently delinquent three (3) payment for a total amount of \$1,553.20.

4. Adequate Protection. Movant does not have, and has not been offered, adequate protection for its interest in the Collateral. Movant alleges that the Collateral is depreciating and the Debtors cannot adequately protect Movant's interest in the Collateral. The Debtors have the burden of proof on the issue of adequate protection for its continued use of the Collateral. Movant alleges that the Debtors will not be able to provide Movant with adequate protection for its interest in the property.

5. Relief Requested. Movant further requests that the automatic stay be terminated with "in rem" relief, to protect the property from any future bankruptcy filings by this Debtor, Debtor's spouse, and any persons acting in concert with Debtor.

Movant further requests that the provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived to enable Movant, its successors and assigns, to immediately

enforce and implement the terms of the proposed order granting relief from automatic stay.

6. Attorneys' Fees. Debtors' actions caused Movant to retain the undersigned counsel to represent it in this matter and Movant has incurred and will incur reasonable attorneys' fees and costs for the preparation of this Motion, proposed Order, negotiations with the Debtor, and attendance at the hearing, if required.

7. Alternative Relief. Alternatively, in the event that the Debtor is current at the time of the hearing on this Motion, then Movant requests that the Court modify the stay to provide the following:

1) That the stay will lift automatically in the event that Debtor fails to cure future default on direct payments, insurance, or plan payments within ten (10) days after notice of such default is sent by Movant via Certified Mail and Regular Mail to Debtor and Debtor's attorney.

2) That only two (2) such default notices are required. After two such notices have been given, the stay will automatically lift upon Debtor's third default without a right to cure.

3) That Movant be granted its reasonable and necessary attorneys' fees in bringing this Motion.

Relief Requested

WHEREFORE, Movant requests that this matter be set for a hearing and that upon such hearing the Court enter its order granting Movant relief from the automatic stay of 11 U.S.C. §362(a) by excepting from such stay foreclosure of Movant's lien or security interest in the Collateral and authorizing Movant to take possession of the Collateral and to exercise its rights in the Collateral as a secured creditor in accordance with applicable law. That the provisions of Rule 4001(a)(3) of Federal Rules of Bankruptcy Procedure be waived to enable Movant, its successors and assigns, to

immediately enforce and implement the terms of the proposed order granting relief from automatic stay. Alternatively, that the Court grant in rem relief as to the property, which relief prohibits Debtors and all persons and/or entitles acting in concert with Debtors directly or indirectly from taking any actions in obtaining possession of the property and that said relief be made binding in any and all Chapter 7, 11 and 13 cases, as to the property and as the Debtors, any transferees, assigns, or others with a possessory interest for 180 subsequent to entry of this order. Movant requests such other relief as may be just and proper.

NOTICE

THE TRUSTEE (IF ONE HAS BEEN APPOINTED) OR THE DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF FROM THE AUTOMATIC STAY WITHIN 12 DAYS FROM THE SERVICE OF THE MOTION. (UNDER BANKRUPTCY RULE 9006(F) 3 DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL). THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

Respectfully submitted,

/s/ Gregory A. Ross
Gregory A. Ross
State Bar No. 17302500
Attorney for Movant

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was November 9, 2009, duly served on all parties of interest.

John Wilson
2711 Colquit
Wichita Falls, Texas 76301

Linda Wilson
3261 W. Arrowhead Drive
Wichita Falls, Texas 76310

Debtors' Attorney
Trustee

/s/ Gregory A. Ross
Gregory A. Ross

CERTIFICATE OF CONFERENCE

I do hereby certify that on November 6, 2009, I conferred with the attorney for the Respondents and was advised that the relief requested in the Motion is opposed by Respondents.

DATED: November 9, 2009

/s/ Gregory A. Ross
Gregory A. Ross